

REMARKS

Reconsideration of the application is requested.

Claims 1-19 remain in the application.

Applicants appreciatively acknowledge the Examiner's grant of Applicant's request for continued examination of the instant application, pursuant to 37 C.F.R. 1.114.

In item 3 on page 2 of the above-identified Office Action, claims 1, 2, 11, and 12 have been rejected as being fully anticipated by Kay (U.S. Patent No. 5,983,112) under 35 U.S.C. § 102.

As will be explained below, it is believed that the claims were patentable over the cited art in their original form and, therefore, the claims have not been amended to overcome the references.

Before discussing the prior art in detail, it is believed that a brief review of the invention as claimed, would be helpful. Claim 1 calls for, *inter alia*:

...

wirelessly transmitting a data message more than one time using at least two different carrier

frequencies ***in temporal succession*** to increase
immunity to interference . . .

Kay discloses a mobile radio system having a plurality of cells A to G (col. 4, lines 8-11). Each cell has a base station with a transmitting and receiving unit. When a call must be completed either to or from a mobile, a call set up phase is entered whereby the mobile and base station cooperate to locate and identify the called mobile (col. 4, lines 63-65). When the mobile detects the initiation of a speech spurt, a reverse allocation request is sent at three different times, at three different carrier frequencies, and on each transmission the power level is randomly selected (col. 5, lines 2-8). This triply redundant message transmission is illustrated in FIG. 5 of Kay. Once the base station has located a traffic channel which the mobile can use for the transmission of the speech spurt, that assignment is transmitted back to the mobile in the same triply redundant fashion.

In Kay, the control channels (whether in the forward or reverse direction) are subdivided. As shown in FIG. 3, within each 6.67 ms slot time, there are two forward control channels. The 6.67 ms slot is subdivided into four subslots, as shown in FIG. 4. Importantly, as shown in Fig. 4, and

explained in the paragraph in col. 5, beginning on line 14 of Kay, after the mobile has identified the initiation of a speech spurt the mobile then **randomly** selects an RA subslot from slot 1, an RA subslot from slot 2 and an RA subslot from slot 3. According to Kay, performance management (trading off increased delay for increased probability of successful transmission) may be implemented by **randomly selecting** subslots in the first three pairs of available subslots, etc. (col. 5, lines 22-25).

This method of transmitting described in Kay varies greatly from that of the present invention, which is to transmit a data message in temporal succession, as recited in claim 1 of the instant application.

In fact, the invention of Kay cannot transmit a message in temporal succession. Looking to fig. 6 of Kay, and to col. 5, lines 57-59, "the subslots which are shaded and labeled 'exclusive slots' cannot be used by the mobile for transmission of its reverse allocation request." (Emphasis added). This configuration necessarily breaks the succession of data.

Clearly, Kay does not show wirelessly transmitting a data message more than one time using at least two different

carrier frequencies ***in temporal succession***, as recited in claim 1 of the instant application.

In item 5 on page 3 of the above-identified Office Action, claims 3 and 6 have been rejected as being obvious over Kay (U.S. Patent No. 5,983,112) in view of Shanbhag (U.S. Patent No. 6,314,125) under 35 U.S.C. § 103.

In item 6 on page 3 of the above-identified Office Action, claims 4, 5, and 7-9 have been rejected as being obvious over Kay (U.S. Patent No. 5,983,112) in view of Shanbhag (U.S. Patent No. 6,314,125) as applied to claim 1, under 35 U.S.C. § 103.

Considering the above-mentioned deficiencies of the Kay reference with regard to claim 1, and the fact that claims 3 through 9 ultimately depend on claim 1, it is believed not to be necessary at this stage to address the secondary Shanbhag reference applied in the rejection of claims 3 through 9, and whether or not there is sufficient suggestion or motivation with a reasonable expectation of success for modifying or combining the references as required by MPEP § 2143.

In item 7 on page 4 of the above-identified Office Action, claims 9 and 10 have been rejected as being obvious over Kay

(U.S. Patent No. 5,983,112) as applied to claim 1, under 35 U.S.C. § 103.

Considering the above-mentioned deficiencies of the Kay reference with regard to claim 1, it is believed not to be necessary at this stage to address whether or not there is sufficient suggestion or motivation with a reasonable expectation of success for modifying the Kay reference, as required by MPEP § 2143.

In item 8 on page 4 of the above-identified Office Action, claims 12-19 have been rejected as being obvious over Kay (U.S. Patent No. 5,983,112) under 35 U.S.C. § 103.

For at least the same above-mentioned deficiencies of the Kay reference, with regard to independent claim 1 of the instant application, Kay also does not show or suggest the features of independent claims 12 or 16. (Both claims 12 and 16 recite transmitting a data message in temporal succession.) Consequently, Kay also does not show or suggest the features of claims 13-15, which are ultimately dependent on independent claim 12, nor does it show or suggest the features of claims 17-19, which are ultimately dependent on independent claim 16. It is therefore believed not to be necessary at this stage to address whether or not there is

sufficient suggestion or motivation with a reasonable expectation of success for modifying the Kay reference as required by MPEP § 2143.

It is accordingly believed to be clear that none of the references, whether taken alone or in any combination, either show or suggest the features of claims 1, 12, or 16. Claims 1, 12, or 16 are, therefore, believed to be patentable over the art. The dependent claims are believed to be patentable as well because they all are ultimately dependent on claims 1, 12, or 16.

In view of the foregoing, reconsideration and allowance of claims 1-19 is solicited.

In the event the Examiner should still find any of the claims to be unpatentable, counsel would appreciate receiving a telephone call so that, if possible, patentable language can be worked out.

It is noted that no shortened statutory period for reply has been set in the Office action.

If an extension of time is required for this paper, Petition is herewith made.

Appl. No. 09/9947
Amdt. Dated January 29, 2004
Reply to Office Action of September 11, 2003

Please charge any other fees that might be due with respect to Sections 1.16 and 1.17 to the Deposit Account of Lerner and Greenberg, P.A., No. 12-1099.

Respectfully submitted,

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For Applicants

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